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SUBJECT: G/TIP AMBASSADOR ENCOURAGES REFORM IN HONG KONG

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11. (SBU) SUMMARY: G/TIP Ambassador Luis CdeBaca,s December 4 meetings with senior Hong Kong officials, consulates, NGOs, and the media stressed the USG was committed to tackling TIP, and that the Hong Kong Government (HKG) and other governments needed a paradigm shift in their approach to formulating and enforcing modern anti-slavery laws. Hong Kong officials vigorously defended their record of enforcing existing legislation. The Chief Secretary (CS) and Secretaries of Security and Labor/Welfare all stressed the importance of the US-HK relationship, particularly in law enforcement, but insisted that TIP was not a problem in Hong Kong, and that law enforcement was committed to cracking down on sex trafficking and labor violations. CS Henry Tang stressed the HKG,s disappointment in the Tier 2 downgrade, asked whether the U.S. was "moving the goal posts," and expressed hope the U.S. and Hong Kong could "put this all behind us in next year's report." Secretary for Security Ambrose Lee and Secretary for Labor and Welfare Matthew Cheung listened intently to Ambassador CdeBaca's presentation, while defending Hong Kong's existing approach to TIP in a two-hour meeting that also included senior HKG labor, immigration and police officials. Secretary Cheung vigorously stressed his Bureau's determination to enforce labor laws related to foreign domestic workers (FDW). He criticized Indonesia for exporting the debt bondage problem to Hong Kong and giving the HKG a bad name. Similarly, Secretary Lee, while "treasuring the relationship" with the U.S., said "a fair assessment of HK would further amicable relations on both sides." Ambassador CdeBaca also met with seven NGOs who were generally critical of HKG performance, particularly with respect to legal protection and social services for FDWs and restrictions on FDWs, ability to change employers. The Indonesian and Philippines consulates shared their views on the conditions FDWs faced in Hong Kong. END SUMMARY

CS Tang: "Downgrade Left a Bad Taste in Our Mouths"

12. (SBU) In his meeting with Ambassador CdeBaca, Chief Secretary (CS) Tang expressed appreciation for the full range of cooperation with the U.S and stressed the HKG wanted to work together on all fronts. He noted his disappointment that Hong Kong had been ranked under Tier Two and was surprised to hear that Hong Kong had in any way not been cooperative on TIP. He said Hong Kong "welcomes people" but "does not welcome people here illegally," saying that authorities took a robust stance on economic migrants, just as the U.S. did with Mexico. Tang maintained that Hong Kong,s legal system was "ample and adequate." Tang also asked, based on a report it had received from the Hong Kong Economic and Trade Office in Washington, if the U.S. was "moving the goal posts" on TIP. He said he didn't want TIP to become a stumbling block for other issues and areas of

US-HK cooperation, as the downgrade "left a bad taste in our mouths." He said he wanted the U.S. to know "where Hong Kong was coming from." He hoped the U.S. and Hong Kong could "put this behind us in the next TIP report." Tang asked if the U.S. would rank itself on the Tier Two watch list next year and wondered what that ranking might be. He noted that Hong Kong's ability to work with its friends on mutual problems, such as drug trafficking, was a principle that had served it well over the years. However, Hong Kong did not like being judged by others who were saying it was not doing a good job.

13. (SBU) Ambassador CdeBaca responded that it was important in our relationship to have honesty and to work together as law enforcement partners. It was also important for the U.S. to be open with its partners on international norms and standards. It was in that spirit that the TIP ranking was made. The Ambassador noted that continued, sustained, forward momentum was needed for territories to maintain Tier 1 status. He recounted his meeting with HKETO Commissioner Tong in Washington where he stressed the importance of HK's very capable law enforcement agencies, which are the envy of the world having modern anti-TIP law enforcement tools that meet global standards. The Ambassador noted that the majority of modern-day slavery occurred in Asia and many victims were trapped in debt bondage due to high recruiting fees. This occurred in the U.S. as well. He also noted that over half the countries in the world now had modern anti-TIP laws, replacing legislation that was in many cases based on UK laws from the 1880s. Ambassador CdeBaca stated that Hong Kong's trafficking in persons law is also based on the 1880s UK law and should be updated to include labor trafficking. Victim identification, prevention, and outreach were minimum

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standards which were all accomplishable, said Ambassador CdeBaca.

14. (SBU) CS Tang cautioned that it was necessary to strike a balance between deterring illegal immigration and exercising compassion when dealing with potential TIP victims, but didn't think TIP was a problem in Hong Kong. Based on Hong Kong's experience, those who entered the territory illegally were economic migrants with whom Hong Kong dealt in a compassionate manner, and whose rights were preserved. Tang described foreign domestic workers (FDWs) as "part of the community" and insisted there were few cases of abuse, although fights with employers were natural.

Security, Labor Secretaries Defend Hong Kong's Approach

15. (SBU) In a two-hour meeting with Secretary for Security Ambrose Lee, Secretary for Labor and Welfare Matthew Cheung, and key law enforcement, labor and social welfare officials, Ambassador CdeBaca noted that the U.S. initially lacked the legal tools needed to combat TIP in the 1990s. Only when Congress passed a comprehensive law aimed at protecting TIP victims in 2000 did law enforcement agencies and prosecutors obtain sufficient tools to fight a crime that no longer was restricted to cross-border movement of people for prostitution. Modern-day slavery consisted of all forms of forced labor, he explained, and anti-TIP laws needed to reflect that reality. Ambassador CdeBaca encouraged Hong Kong to expand its conception and definition of TIP to focus more on conditions of exploitation, whether for sexual services or other forms of forced labor, and not solely on whether cross-border movement occurred. (Comment: Although the Secretaries and law enforcement officials listened politely, their subsequent comments demonstrated their interpretation of TIP remained tied to illegal migration and smuggling. End Comment)

16. (SBU) Noting that the Palermo Protocol defined TIP as the entire process--from recruitment to transferring to the receipt of persons--for the purpose of exploitation, Ambassador CdeBaca explained that the U.S. recently amended

the Trafficking Victims Protection Act to allow the U.S. to prosecute foreign recruiters abroad for using fraudulent recruiting practices on TIP victims sent to or already in the U.S. He noted that Indonesian and Philippine FDWs in Hong Kong incurred enormous debt from recruiters in their home countries, but Hong Kong currently had no legal means to prosecute those recruiters for TIP. He suggested Hong Kong explore ways to expand its territorial jurisdiction to enhance its anti-TIP regime, explaining that the U.S had passed a statute that extended its jurisdiction along the entire chain back to the source country. The Ambassador stressed that the objective should be to punish people who enslave others while helping those who are enslaved to receive the services they need. He also noted the hidden nature of trafficking crimes, and urged Hong Kong authorities to move to more proactive work on the issue.

¶7. (SBU) While listening attentively, Secretaries Cheung and Lee maintained that Hong Kong's labor laws offered adequate protection to FDWs and that both sex trafficking and forced labor were not problems in Hong Kong. Cheung acknowledged the large debt incurred by Indonesian FDWs was a huge burden on the workers, but blamed the Indonesian government for exporting the debt problem to Hong Kong. He noted that he had written the Indonesian Consul General twice about lowering the fees charged to FDWs. The debt issue was "a hard nut to crack" because the Indonesian government insisted the fees were charged in a transparent manner and the FDWs knew what they were signing up for. Faced with this reality, Cheung stressed the HKG instructed Hong Kong employers not to get involved with arrangements made between the FDW and the recruitment agency in the source country. He thanked the Ambassador for his inspiring presentation, but noted that it would be very difficult for a territory of Hong Kong's size and dependency on foreign trade to extend legal jurisdiction to source countries of trafficked victims.

¶8. (SBU) While he "could not rule out one or two cases may occur" where crime syndicates tricked women to come to Hong Kong and later forced them into prostitution, Secretary for Security Lee insisted most of the women were "economic migrants" who came willingly to work in Hong Kong's sex trade. In some instances, prostitutes repatriated to the Mainland attempted to re-enter Hong Kong under a different identity, explained Lee. Ambassador CdeBaca responded by saying that the UN Palermo Protocol did not require movement in defining trafficking, noted that there was more

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non-coerced movement of prostitution than coerced, and emphasized that initial consent of an individual to engage in prostitution was irrelevant in determining whether or not they were a trafficking victim. In closing, Secretary Lee said, "while treasuring the relationship, a fair assessment of Hong Kong would further amicable relations on both sides."

Roundtable with NGOs

¶9. (SBU) During a roundtable with local NGOs, NGO leaders described the legal limbo some FDWs found themselves in if their employer terminates the employment contract or they file a complaint against the employer. International Social Service (ISS) Director of Development Adrielle Panares described a scenario where an employer may decide to fire the helper after learning she needed extensive medical care, thus alleviating the employer of the responsibility to pay medical bills. Because the FDW was no longer employed and thus not considered a Hong Kong resident, she would have to pay the substantially higher medical fees non-residents are charged. Ambassador CdeBaca noted the arrangement was a disincentive for exploited FDWs to complain for fear of losing their resident status and all its associated benefits.

¶10. (SBU) Panares also highlighted a loophole in Hong Kong laws that FDWs are increasingly using to extend their stay

beyond the two weeks allowed once an employment contract was terminated. She told Ambassador CdeBaca that she had seen a steady increase in FDWs applying for refugee or asylum status when caught by police for overstaying or working illegally. The FDWs hoped to remain in Hong Kong and receive government-funded shelter and social services provided to asylum and refugee applicants. (Note: The Hong Kong government funds ISS to provide shelter, food, clothing and transportation for asylum seekers, torture claimants and refugees. End note.) The NGO representatives agreed FDWs were forced to take this route because the two-week grace period is often not enough time to find a new employer, and the FDWs were desperate to make money.

¶11. (SBU) ISS Panares stated, and other NGOs agreed, that the 2009 TIP Report downgrade of Hong Kong had an impact on HKG authorities, willingness to engage with NGOs on the TIP issue. While the Social Welfare Bureau handled victim assistance for the most part, ISS noted that the Security Bureau held the most power. Raids of sex establishments led to the arrest and deportation of women in prostitution for violating conditions of stay. ISS told us police often asked questions such as "If you were not a (willing prostitute/a sexually abused FDW), why didn't you run and report your situation to the police?" (Comment: Such questions are indicative of a lack of understanding by front-line officials of the nature of the trafficking problem and lack of a victim-centered approach to identifying trafficking. End comment.) The NGOs surmised that in order for the sex establishments with TIP victims to operate, organized crime triad groups in Hong Kong "must be involved." International Organization for Migration Director Gloria Ko observed that there was little follow-up on reports of FDW abuses. NGOs noted that the HKG only assisted in funding for the protection and care of victims if the victims were cooperating witnesses in an ongoing trial, in which case the victims were handled "like gold." TIP victims in NGO care who needed medical care might not receive it, unless they were serving as witnesses in a case, in which case they were guaranteed care.

¶12. (SBU) When Ambassador CdeBaca subsequently raised these issues with senior Hong Kong officials, they insisted FDWs were entitled to the lower resident medical fees during the two-week period because they still had their Hong Kong identification card. Once the two weeks expired, however, FDWs had to pay the higher non-resident fees even if they were pursuing legal action against their previous employer. Ambassador CdeBaca highlighted the importance of allowing victims time after escaping an abusive environment to overcome their trauma and make rational decisions about the next course of action. He pointed to the "reflection period" model many European countries have adopted. Victims could remain in the destination country for either 60 or 90 days to reflect on their situation, and at the end of this period, they had to decide whether to pursue legal action. This arrangement prevented potential TIP victims from being handled as immigration cases and/or forced to make decisions when they weren't ready. (Note: Ambassador CdeBaca told HKG officials he would share with them information on the European Union model and other best practices. Post has received the information and will pass to the HKG. End Note)

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Meeting with Indonesian Consul General

¶13. (SBU) Indonesian Consul General Ferry Adamhar briefed Ambassador CdeBaca on the Indonesian FDW situation in Hong Kong. CG Adamhar stressed that the Consulate's role in helping the 131,000 Indonesian FDWs in Hong Kong was limited. However, he highlighted the Consulate's three-tier program including: (1) orientation upon arrival in Hong Kong to provide a soft landing, (2) a "during stay program," and (3) an exit program to help FDWs readjust to life back in

Indonesia. Adamhar said FDWs receive 5-6 months of training in Indonesia before moving to Hong Kong, including language training. He cited Indonesian FDWs' ability to converse and understand basic Cantonese as a principal reason why the number of Indonesian FDWs had overtaken Filipinas in Hong Kong. Adamhar extended an invitation to Ambassador CdeBaca to visit the FDW training facilities in Surabaya. The Consulate had also invited journalists and NGOs to visit these facilities, Adamhar reported. He explained that the Consulate endorsed every visa issuance by the Hong Kong government in order to keep track of each FDW in Hong Kong. This "increased the integrity of the process," he stressed.

¶14. (SBU) In response to Ambassador CdeBaca's question about cases of abuse, Adamhar replied that it was "very rare" for FDWs to approach the Consulate for help. However, he cited a recent case where a judge punished an employer for abusing his FDW. He characterized this as "excellent" work by the Hong Kong government, and noted that this would not have happened in other destination countries.

¶15. (SBU) Ambassador CdeBaca noted that Indonesia was upgraded to Tier 2 in 2007, a success for the GOI's efforts on TIP. The U.S., however, was still concerned about labor brokers and complaints from destination countries about the high debts Indonesian FDWs had to incur, as well as the use of loan sharks and other creditors. He said that the U.S. was now doing more joint law enforcement work with source countries and highlighted a recent joint operation with Mexico that resulted in simultaneous arrests. The Ambassador suggested that opportunities for joint law enforcement with Hong Kong might exist, not just on the regulatory side (licenses) but also in joint police investigations. Adamhar agreed, but noted that Indonesian law required an MOU or some provision that protected Indonesian workers. Indonesia had no such MOU with Hong Kong but was satisfied with Hong Kong's excellent labor protection system, Adamhar stated. He agreed that joint law enforcement would be a positive development and had already invited the Hong Kong government to send officials to Jakarta to see firsthand the situation there. Finally, on the question of "freedom of contract" which allowed FDWs to move from one employer to another, the Indonesian CG explained that, while the Indonesian government welcomed this, Indonesian law required that FDWs still go through agents as a way of tracking and managing them.

Philippine FDWs in Hong Kong

¶16. (SBU) In his meeting with Philippines Vice-Consul for Assistance to Nationals Val Roque, Ambassador CdeBaca welcomed the new Philippines Attorney General's swearing-in statement which highlighted the importance of fighting TIP. Roque briefed the Ambassador on a recent case the HKG was prosecuting involving two Filipinas who were trafficked to Hong Kong via Macau with promises of working in a restaurant but who were forced into prostitution. The HKG was charging the perpetrators with TIP for the purposes of prostitution and breaching conditions of stay, Roque explained. The trial was set for February. Roque was hopeful the victims would be cooperative. The HKG was providing HKD 100/day, and NGOs were providing a full-time social worker for the victims. Roque said Hong Kong authorities had been professional in dealing with the case, as in the 2007 case. He noted that most victims didn't want to cooperate but in the current case, they were so angry at their relatives who "set them up" that they decided to go through with the trial. Roque said victims would be more willing to go through with trafficking cases if the HKG allowed them to work in Hong Kong while waiting trial, rather than being held in a shelter. Roque also noted that the fear of retribution by traffickers prevented victims from coming forward and testifying. Ambassador CdeBaca noted research from the Nexus Institute showed that trafficked women were more likely to assist in the prosecution of their traffickers and stay for trial if they could work. The Ambassador noted that in the United States, a complaint by a trafficking victim was not required

to start a criminal case. Roque responded that victim statements could be helpful in trial if this were the case in Hong Kong.

¶17. (SBU) Turning to FDWs who ended up in shelters because of termination of employment or labor disputes, Roque described a complicated and costly process. For example, the conciliation process took time to schedule, i.e., FDWs had to wait seven days before they could file a complaint (used to encourage the parties to settle). The Consulate would try to schedule a conciliation meeting within two weeks but it could take a month. However, after termination, FDWs were required to leave Hong Kong after 14 days, which meant they had to apply for an extension of their visas at their own cost. The High Court had rejected prior challenges to the "two-week rule," said Roque. He suggested one of the reasons the Hong Kong government sustained this policy was to make FDWs ineligible for permanent residency, since they had to leave Hong Kong after each two-year contract in order to renew the contract or change employers.

¶18. (SBU) Roque appealed to Ambassador CdeBaca to help minimize the number of Philippine women who came to Hong Kong during navy ship visits. He asked if there was some way for the U.S. to "minimize trafficking" by certifying certain bars that service men could go to in Wanchai. He said many Philippine women come over on their own with no counseling and little money. Ambassador CdeBaca replied that programs had been introduced in Korea to deal with this and agreed that we should look at safeguards for our military deployments.

¶19. G/TIP and EAP/RSP cleared this cable.
MARUT